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Honorable Marc Barreca  
Chapter 11  
Location: Seattle

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

TIMOTHY DONALD EYMAN,  
  
Debtor.

Case No. 18-14536-MLB

KAREN EYMAN'S RESPONSE TO  
STATE'S OBJECTION TO  
EXEMPTIONS.

Karen Eyman, by and through counsel responds to the State of Washington's Objection to her IRA as follows:

1. Karen submits that the IRA is not community property and consequently is not property of the estate.

2. If it is or was community property, it is wholly exempt pursuant to 11 U.S.C. § 522(a)(3). Section 522(a) provides in part as follows:

Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2)<sup>1</sup> or, in the alternative, paragraph (3)<sup>2</sup> of this subsection.

Section 523(b)(3) provides in part as follows:

(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

<sup>1</sup>Paragraph (2) relates to state exemptions or other items of property specified in Subsection (d), i.e. homestead, clothes, etc.

<sup>2</sup> The old people and the investment community had a better lobbyist. Retirement accounts, of any kind are exempt, regardless of whether they are exempt under state law.

1 If the effect of the domiciliary requirement under subparagraph (A)  
2 is to render the debtor ineligible for any exemption, the debtor may  
3 elect to exempt property that is specified under subsection (d).

4 (4) For purposes of paragraph (3)(C) and subsection (d)(12), the  
5 following shall apply:

6 (A) If the retirement funds are in a retirement fund that has  
7 received a favorable determination under section 7805 of  
8 the Internal Revenue Code of 1986, and that determination  
9 is in effect as of the date of the filing of the petition in a  
case under this title, those funds shall be presumed to be  
exempt from the estate.

10 (B) If the retirement funds are in a retirement fund that has  
11 not received a favorable determination under such section  
12 7805, those funds are exempt from the estate if the debtor  
demonstrates that--

13 (i) no prior determination to the contrary has been made by  
14 a court or the Internal Revenue Service; and

15 (ii)(I) the retirement fund is in substantial compliance with  
16 the applicable requirements of the Internal Revenue Code  
of 1986; or

17 (II) the retirement fund fails to be in substantial compliance  
18 with the applicable requirements of the Internal Revenue  
19 Code of 1986 and the debtor is not materially responsible  
20 for that failure.

21 In this case the IRA in question is administered by Pershing, a multi billion dollar  
22 investment banking institution. Neither the debtor nor her counsel have the time or expertise to  
23 examine Pershing's records to determine whether it is compliance with the various regulatory  
24 agencies regulating it. In this case this is not relevant. No one can seriously suggest that either  
25 Tim or Karen have sufficient power to, in the words of the statute, "the debtor is not materially  
26 responsible for that failure."  
27  
28

This analysis was applied to § 522 by the Court in *In re Hamlin*, 465 B.R. 863 (B.A.P. 9th Cir. 2012) involving an inherited IRA. In this case the funds are not from an inherited IRA but Karen recognizes that a different result might flow from an inherited IRA. *See, Clark v. Rameker*, 573 U.S. 122, 134 S. Ct. 2242, 189 L. Ed. 2d 157 (2014). However, this is clearly not an inherited IRA.

The objection is not in good faith, is not supported by law or fact, and should be summarily overruled.

Respectfully submitted this June 14, 2022

/s/ Marc S. Stern  
Marc S. Stern  
WSBA 8194  
Attorney for Karen Eyman.

